

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

FILED
OCT - 3 2018
Clerk, U.S. Courts
District Of Montana
Missoula Division

RODNEY THOMAS DUBOIS,

Petitioner,

vs.

LORAIN WODNIK, INTERIM
DIRECTOR MONTANA
DEPARTMENT OF CORRECTIONS;
STEVEN JOHNSON, WARDEN, AN
AGENT FOR MONTANA
DEPARTMENT OF CORRECTIONS;
AND THE ATTORNEY GENERAL
OF THE STATE OF MONTANA,

Respondents.

CV 17-25-GF-DLC-JTJ

ORDER

United States Magistrate Judge John T. Johnston entered his Findings and Recommendations in this case on July 24, 2018, recommending the denial of Petitioner Rodney Thomas Dubois' ("Dubois") claims for prosecutorial misconduct and ineffective assistance of counsel. (Doc. 14 at 26.) Dubois timely filed an objection.¹ (Doc. 11.) Accordingly, Godfrey is entitled to de novo review of those findings and recommendations to which he has specifically objected. 28

¹ Dubois is represented by counsel. Dubois' counsel timely filed an objection on August 7, 2018, (Doc. 15) before Dubois filed an out-of-time pro se objection on August 15, 2018 (Doc. 16). Except in the situation described in *Anders v. California*, 386 U.S. 738, 744 (1967), federal constitutional law does not require a court to accept pro se filings from a person who is represented by counsel. Consequently, this Court will not review Dubois' pro se filing.

U.S.C. § 636(b)(1)(C). Absent objection, this Court reviews findings and recommendations for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted). “A party makes a proper objection by identifying the parts of the magistrate’s disposition that the party finds objectionable and presenting legal argument and supporting authority, such that the district court is able to identify the issues and the reasons supporting a contrary result.” *Montana Shooting Sports Ass’n v. Holder*, 2010 WL 4102940, at *2 (D. Mont. Oct. 18, 2010) (citation omitted).

Dubois’ objection is insufficient. His objection amounts to a blanket objection to Judge Johnston’s findings of fact and an unsupported objection to Judge Johnston’s conclusion that the Montana Supreme Court’s decision was not contrary to clearly established federal law. While Dubois “incorporates all of his previously made arguments by reference,” this is insufficient to support his objection because an objection to findings and recommendations “is not a vehicle for the losing party to relitigate its case.” *Hagberg v. Astrue*, 2009 WL 3386595,

at *1 (D. Mont. Oct. 14, 2009). Consequently, this Court reviews for clear error.

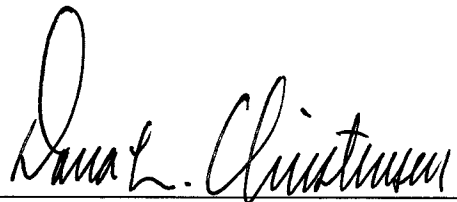
Reyna-Tapia, 328 F.3d at 1121. Finding none,

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 14) is ADOPTED IN FULL. Dubois' prosecutorial misconduct claim is denied because it does not survive deferential review under AEDPA and his ineffective assistance of counsel claim is denied on the merits.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

IT IS FURTHER ORDERED that the Clerk of Court will direct the entry of judgment in favor of Respondents and against Petitioner.

DATED this 3rd day of October, 2018.



Dana L. Christensen, Chief Judge
United States District Court